WHY AND HOW TO INTERNATIONALISE LAW CURRICULUM CONTENT

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I INTRODUCTION

The selection of course content will always be an important part of the design of a legal curriculum. One idea for redesign is to 'internationalise' the curriculum. By internationalisation is meant 'the process of integrating the international dimension into the … major functions' of a university course, where 'international' means an intercultural, global outlook and where 'dimension' includes perspectives, activities and programmes with that end in sight.[1] The value of internationalisation so defined and options for its implementation have drawn responses from law schools that range from trail blazing to apathetic.[2]

This article reappraises both the justifications behind and the methods for implementation of internationalisation. Asking an initial question – whether the push for internationalisation is valuable – is important in internationalisation research because curriculum redesign is 'best developed as part of an institution

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1 Jane Knight and Hans de Wit, 'Strategies for Internationalisation of Higher Education: Historical and Conceptual Perspectives' in Hans de Wit (ed), *Strategies for Internationalisation of Higher Education* (European Association for International Education, 1995) 15. See also the recent sensible definition provided by Vai Ai Lo, 'Before Competition and Beyond Complacency: The Internationalisation of Legal Education in Australia' (2012) 22 *Legal Education Review* 3, 4.

2 See Lo, ibid; Claudio Grossman, 'Building the World Community Through Legal Education' in J Klabbers and M Sellers (eds), *The Internationalization of Law and Legal Education* (Springer, 2008) 22; Sally Kift, '21st Century Climate For Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1, 2; Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 *Sydney Law Review* 537, 551; John A Barrett Jr, 'International Legal Education in US Law Schools: Plenty of Offerings, But Too Few Students' (1997) 34 *International Law* 845, 855; Burton Bollag, 'A Law School on the Move Takes a Global Approach' (2001) 7(18) *The Chronicle of Higher Education* A43.

wide approach.[3] Only if institutions can be persuaded that internationalisation is valuable will they consider changing their curricula. This article concludes that internationalisation *is* valuable, and proceeds to the next enquiry: identification of ways in which curriculum content can actually *be* internationalised. These are the twin aims of the article.

This research uses tort law as a lens for consideration of internationalisation, because it is a compulsory course at most law schools and because it regulates many non-criminal wrongs in social life, whether that be negligently-built leaky homes, the nuisances caused by a neighbour or compensation for personal injury.

The unique depth of perspective gained in this research relies on the mixed methods approach adopted. The data sources were an extensive literature review and case studies from two Australasian universities: the University of Western Australia ('UWA') and the University of Otago, New Zealand ('Otago').[4] The case studies consisted of (1) interviews with people involved in curriculum design at each University (such as the course co-ordinator),[5] (2) a survey of students currently taking or recently having taken the torts class at each university,[6] and (3) an analysis of course documents for international content.[7] All these resources were collected and searched for the light they shed on the twin aims of this article.[8]

This article has wider implications for those involved in curriculum design in areas of the law other than torts, particularly

[3] Graham Elkin, Faiyaz Devjee and John Farnsworth, 'Visualising the "Internationalisation" of Universities' (2005) 19 *International Journal of Educational Management* 318, 320. See also Klara Ermenc, 'Limits of the Effectiveness of Intercultural Education and the Conceptualisation of School Knowledge' (2005) 16 *Intercultural Education* 41, 42.

[4] These were selected because of their strong connection through the Matariki Network, a network of seven universities. See <http://www.matarikinetwork.com./>

[5] Questions included the perceived meaning of internationalisation to that person, the perceived value of internationalisation, whether some areas of law were more amenable to internationalisation than others, difficulties in achieving internationalisation, examples of internationalisation in that person's curriculum, whether that person or institution had a deliberate internationalisation strategy, and why or why not.

[6] Questions included the amount of time the lecturer spent teaching international material, what range of international materials students the lecturer could recall the use of, what importance the lecturer attributed to the international material, whether there was enough focus on international material, and why or why not.

[7] This analysis focused on the quantitative extent of inclusion of international materials, as well as qualitative indicators of internationalisation such as the diversity of international materials used (cases, texts, articles, statutes, and so on) and the prominence of international material in the course documents.

[8] The analysis embraced the inductive approach explained in David R Thomas, 'A General Inductive Approach For Analyzing Qualitative Evaluation Data' (2006) 27 *American Journal of Evaluation* 237. It involved identification and categorisation of themes or patterns of response, and was repeated until no new themes or patterns emerged.

because the results and recommendations are drawn from internationalisation research across law and higher education more generally. In turn, the considerations leading to suggestions for change in tort law are applicable to other areas. This is because in the right conditions, any higher education course can be internationalised,[9] whether mathematics in the United States,[10] management studies in India,[11] or commercial law for international students in New Zealand.[12] The common thread is that internationalisation is valuable and achievable and to these twin aims I now turn.

II WHY INTERNATIONALISE?

Those writing about internationalisation of curriculum content offer a variety of reasons why it is valuable.[13] A close analysis of this literature reveals a fairly consistent taxonomy of benefits of internationalisation: economic, political, humanistic, and academic. [14] Each of these benefits is analysed below and compared to the findings from the interviewed academics, the surveyed students and the course documents at the surveyed universities.

9 Marijk van der Wende, 'Internationalizing the Curriculum in Higher Education: Report on a OECD/CERI Study' (1996) 2 *Tertiary Education and Management* 186.

10 Peter Appelbaum, Louis M Friedler, Carlos E Ortiz and Edward F Wolff, 'Internationalizing the University Mathematics Curriculum' (2009) 13 *Journal of Studies in International Education* 365.

11 Manoj Kumar, 'Management Education in India: Issues and Challenges' (2011) 3 *Journal of Management and Public Policy* 5.

12 Jonathan Barrett, 'Barriers and Bridges: Reflections on Teaching New Zealand Commercial Law to International Students' (Paper presented at Reflective Practice: The Key to Innovation in International Education Conference, Centre for Research in International Education, Auckland, New Zealand, 23-26 June 2005).

13 Ciaràn Dunne, 'Developing an Intercultural Curriculum within the Context of the Internationalisation of Higher Education: Terminology, Typologies and Power' (2011) 30 *Higher Education Research and Development* 609.

14 See Douglas Bourn, 'From Internationalisation to Global Perspectives' (2011) 30 *Higher Education Research and Development* 559; Maureen Bell, 'Internationalising the Higher Education Curriculum: Do Academics Agree?' (Paper presented at the 27th HERDSA Conference, Miri, Sarawak, July 2004), 1; Jane Knight, 'Internationalization Remodeled: Definition, Approaches, and Rationales '(2004) 8 *Journal of Studies in International Education* 5, 21.

A *Economic Benefits*

The dominant benefit (both for students and universities) of internationalising curriculum content is regarded as being economic.[15] There are three steps to the argument.

The first step is the observation that today's world is highly globalised. Sometimes the emphasis is upon globalisation as a generally occurring phenomenon,[16] and at other times the focus is specifically on legal globalisation.[17] Examples of legal globalisation include the increased amount of international activity (including torts) that corporate clients engage in,[18] and the frequent, intense transformation of domestic law firms into multinational ones.[19] The second step in the argument is the contention that law graduates and universities cannot survive in a globalised world with a legal education that focuses only on domestic law.[20] Universities need to attract international students,[21] while law students are sought-after in practice only if they can solve problems in many locations in culturally appropriate ways.[22]

This economic rationale appears sound. International law is already a part of domestic law in many instances due to international treaties governments have signed and global organisations they have joined.[23] Meanwhile, domestic laws often apply beyond our shores because of the Internet. Young lawyers who do not know the details of these interactions cannot serve

15 See Bell, above n 14; Knight, above n 14, 23-24; Eric LeBlanc, 'Internationalizing the Curriculum: A Discussion of Challenges and First Steps Within Business Schools' (2007) 3 *Higher Education Perspectives* 28, 33; Fazal Rizvi, 'Internationalisation of Curriculum' (Unpublished Paper, RMIT University, 2000) 2.

16 Marvin Bartell, 'Internationalization of Universities: A University Culture-based Framework' (2003) 45 *Higher Education* 43, 49; Knight, above n 14, 7; Adelle Blackett, 'Globalization and Its Ambiguities: Implications for Law School Curricular Reform' (1998) 37 *Columbia Journal of Transnational Law* 57, 65-66.

17 Mortimer Sellers, 'The Internationalisation of Law and Legal Education' in J Klabbers and M Sellers (eds), *The Internationalization of Law and Legal Education* (Springer, 2008) 1-2; W Michael Reisman, 'Designing Law Curricula for a Transnational Industrial and Science-Based Civilization' (1996) 46 *Journal of Legal Education* 322, 322-25; John Barrett, above n 2, 846; Anne Hewitt, 'Give Me a Fish or Teach Me to Fish?' (2012) 37 *Alternative Law Journal* 259.

18 John Barrett, above n 2.

19 Jonathan V Beaverstock, '"Managing Across Borders": Knowledge Management and Expatriation in Professional Service Legal Firms' (2004) 4 *Journal of Economic Geography* 157, 174.

20 See International Legal Education and Training (ILET) Committee, International Legal Services Advisory Council (ILSAC), *Internationalisation of the Australian Law* Degree (2004) 9; Knight and de Wit, above n 1.

21 Knight and de Wit, above n 1, 9-10.

22 Ron Edwards, Glenda Crosling, Sonja Petrocevic-Lazarovic and Peter O'Neill, 'Internationalisation of Business Education: Meaning and Implementation' (2003) 22 *Higher Education Research and Development* 183, 187.

23 Compare Lo, above n 1, 5.

their clients' interests very well,[24] and this will sooner or later be reflected in their economic wellbeing. Of course this rationale applies beyond the torts law context. Treaties and conventions colour the interpretation of domestic law in legal areas as diverse as child and family law, civil rights, intellectual property and law of the sea. Meanwhile domestic laws gain an internationalised flavour by virtue of contracts that are signed, insolvency that affects the freedoms of a firm and its directors beyond domestic shores, and many other areas.

The third step in the economic argument does not rely on the first two. It is the recognition that curriculum redesign is by definition 'a future-oriented activity',[25] and that internationalisation of the curriculum will be valuable if those futures in which internationalisation is valuable are likely to occur. Future possibilities include internationalisation receding, continuing on its trajectory, or accelerating toward total integration.[26] If internationalisation continues on or accelerates, the above economic arguments obviously point toward internationalising curriculum content being valuable. Even if it recedes and the world moves toward increased localism, internationalising core law courses might still be valuable, although not for economic reasons. For example, coverage of other legal systems could be used to explain the advantages and disadvantages of the local system.[27]

It may seem strange then that the academics interviewed at UWA and Otago did not emphasise the economic benefits that flow from internationalisation in torts. The UWA academic acknowledged that one consequence of globalisation was that 'we interact with people from different jurisdictions' more than ever, but she ultimately felt the economic argument pointed against internationalisation. 'Most of the [UWA] graduates go out locally' and so she thought it was most important they leave UWA 'with an understanding of what the system is here', followed by the law of other Australian states, and only then of non-Australian law. The Otago coordinator emphasised this point even more strongly. Although he also recognised that 'New Zealand is not separate from the world', he too ultimately stressed the need for a good understanding of domestic law before anything else:

> Most of our students want to become, and they are qualified to become, New Zealand practitioners. They are not qualified to become international practitioners. … We are training people to be New Zealand lawyers.

The Otago coordinator did, however, recognise that internationalisation of law curriculum content would be useful if graduates were leaving New Zealand. It would mean 'students are

[24] Blackett, above n 16, 74; John Barrett, above n 2, 845-55.
[25] Reisman, above n 17, 325-26.
[26] Ibid, 326.
[27] Compare ibid.

equipped with a wider knowledge base' compared to students knowing only New Zealand law, which he recognised 'is a constraint if … then you try to become a practitioner elsewhere'. Both academics believed most of their graduates practice domestically, making further internationalisation unnecessary.

Against this less than supportive outlook from the academics can be considered the student responses. Few UWA respondents mentioned job prospects or other economic reasons as a strong justification for internationalisation. One stated that internationalisation was *not* useful 'in a practical sense given that most students will go on to practice domestically.' When asked for their personal opinion about how much internationalisation there was in their course, 75% of UWA respondents thought there was 'too much focus' on it. The main reason for this response was that it was not perceived to be relevant to the exam or their legal career.

Otago students, on the other hand, frequently mentioned the economic justification for internationalisation. Two recognised that globalisation and technological advances meant inter-jurisdictional issues would arise more frequently in legal practice in the future so that even if students did not work or live overseas, knowing about international legal material would be increasingly relevant. One commented that 'many students will eventually spend some of their career in other countries – particularly the UK and Australia' so that 'being exposed to relevant [international] case law' would be helpful. Fewer than two percent of the Otago respondents thought there was 'too much focus' on international material.

Those considering the internationalisation of their own law curricula – in whatever doctrinal area – should consider whether their law school sees itself as a part of or apart from the rest of the world. Will their graduates practice law in different states and countries? Is this information known? And what role does non-domestic law play within the domestic context? If it is likely that graduates of a particular legal course will practice law internationally, or even if domestic law in an area faces international interplay, then internationalisation should seriously be considered.

B *Political Benefits*

In addition to the economic benefits, political benefits arise from having an internationalised law course. Many scholars mention these benefits, although few can properly explain them.[28] It seems two types of political argument are made when this rationale is invoked. The first is that an increase in

[28] See Bell, above n 14; Glenda Crosling, Ron Edwards and Bill Schroder, 'Internationalizing the Curriculum: The Implementation Experience in a Faculty of Business and Economics' (2008) 30 *Journal of Higher Education Policy and Management* 107; Lo, above n 1, 4.

internationalisation can produce a more equal distribution of power within the classroom.[29] Every course within a university has its own culture. Increasing the international material within that course changes the course's culture[30] by showing students that 'law' means different things in different jurisdictions. This can raise 'questions of authority, legitimacy and acceptance',[31] both of the law and of the teacher. This is said to be a positive change.

The second, related argument is macroscopic. Internationalising curriculum content can reinforce or shatter underlying notions about what is the 'best' legal system. It is concerning that narrow (for example Western) conceptions of law curriculum content are sometimes subtly reinforced under the guise of internationalisation.[32] A good example is the reform of Japanese legal education along American lines. The concern there is the wholesale replacement of Japanese norms of obligation to, and respect for, established authority with one Western conception of the rule of law.[33] Herein lies the political power – and danger – of internationalisation.

Neither academic from the case studies reported observing either kind of political benefit in action in their classrooms, though both (and the UWA academic in particular) raised the law reform function of internationalisation. As the UWA academic put it, 'in terms of law reform and making positive changes … getting ideas from other jurisdictions is actually a really good thing.' Her hope was that teaching international alternatives to tort law 'might plant the spark in someone who then goes on and changes the system'. In torts, a good example of a reform borrowed from overseas is the implementation of an accident compensation system along the lines of New Zealand's own statutory, no-fault, no-litigation scheme.

But reform in other areas of the law could also benefit from considering international developments, from the Continental tradition's differences in evidence law (think of the French reversal of the right to silence) to exceptions in Swedish property

29 Dunne, above n 13, 616-17.

30 Ibid.

31 Blackett, above n 16, 67.

32 Noel Gough, 'Globalization and Curriculum Inquiry: Locating, Representing, and Performing a Transnational Imaginary' in Nelly P Stromquist and Keren Monkman (eds), *Globalization and Education* (Rowman & Littlefield, 2000); Timothy A Canova, Claire Moore Dickerson and Katherine V W Stone, 'Labor and Finance as Inevitably Transnational: Globalization Demands a Sophisticated and Transnational Lens' (2004) 41 *San Diego Law Review* 109, 128.

33 See Hidetoshi Hoshimoto, 'Legal Reform in Japan: The Establishment of American Style Law Schools' (Paper presented at the 44th Annual Meeting of International Studies Association Conference, Chicago, 28 February-3 March, 2007).

law which allow for public access to privately-owned land.[34] These examples illustrate how natural it would be to question one's own legal system simply by being made aware of the vastness of approaches crafted by law across the globe.

Only a minority of surveyed students saw the potential for law reform as a major reason to internationalise curriculum content. Some at UWA and Otago showed they were thinking in a systemic way. One UWA respondent stated it would be 'slightly ignorant to not educate oneself about possibly improving your own legal system'. Several Otago responses made the point that contrasting New Zealand with other countries helps to show that different approaches may be taken and the benefits and disadvantages of each. One continued: '[This] allows us to develop our own opinion of what is the better approach and why.' Such responses reveal a depth of thought that should remind teachers not to assume their students simply work within the status quo.

No doubt students at many law schools are thinking in similar ways. Those who have the ability to change the content of their law courses should take heed. Although the surveyed students comprise only a small sample, their responses express what would make them more engaged in their studies. Students are thinking about improving the law they are learning about, and internationalisation should be seen as a chance to enhance this development.

C *Humanistic Benefits*

There are also 'humanistic' benefits to internationalising curriculum content.[35] In some continental European legal systems, humanistic benefits such as the good that arises from social and personal reflection are promoted as the most important reason to internationalise.[36] Certainly within common law systems, and across law courses within that tradition, the same point can be made: having a wider range of experiences is good for critical thinking[37] and self-development.[38]

Why is this so? At the very least it might stimulate student curiosity,[39] which in law is helpful given that one only needs to

34 Recorded by R P Boast, 'Property Rights and Public Law Traditions in New Zealand' (2013) 11 *New Zealand Journal of Public and International Law* 161, 162.

35 Gavin Sanderson, 'Internationalisation and Teaching in Higher Education' (2011) 30 *Higher Education Research and Development* 661, 662; Bell, above n 14; Crosling, above n 28; Rizvi, above n 15.

36 Jonathan Barrett, above n 12, 8-9.

37 Lo, above n 1, 4; James Gordley, 'Comparative Law and Legal Education' (2001) 75 *Tulane Law Review* 1003, 1008; Vivian Curran, 'Dealing in Difference: Comparative Law's Potential for Broadening Legal Perspectives' (1998) 46 *American Journal of Comparative Law* 657, 658, 663.

38 Kift, above n 2, 4; Bollag, above n 2; Ermenc, above n 3; Appelbaum, above n 10, 372; Knight and de Wit, above n 1.

39 John Barrett, above n 2, 856-57.

know a little about an area of law in order to teach oneself the finer details later on.[40] At most, it can strengthen the domestic curriculum by comparing each subject's history, successes and injustices with those of other systems.[41] Between these two extremes exist several other benefits: internationalised course content makes students more knowledgeable,[42] it enhances their sense of the interconnectedness of all things in a globalised world,[43] and it helps to complete the legal picture for the student.[44]

The interviewed academics saw the value of students realising there is no single way to do things in law. The UWA academic thought this was especially true of tort law where she cited 'a culture of argument, [and where] the rules are not necessarily set in stone.' But really this describes the nature of the *common law*; argumentation and flexibility are not confined to tort law. Law students are trained to analyse the strength of arguments, and they spend considerable time focusing on judicial decisions, many of which exemplify the fact that law is not set in stone.

The Otago students made another point. New Zealand's small size as a country and the non-litigiousness of its society meant 'lots of instances do not make [it to] the courts.' Some students explained that international material could fill in gaps in the domestic legal system, providing 'valuable information in regard to seeing where the law in New Zealand will go.' This was also the main reason given by the 85% of Otago students in whose personal opinion the amount of international material in their torts course was 'about right' as opposed to 'too much' or 'too little'.

These findings provide a number of useful indicators as to whether internationalisation will be useful in other areas of the law, and at universities other than the two studied in this research. Those responsible for curriculum form and reform should be aware that an internationalised curriculum enhances a sense that more is arguable. Usually this will be a desirable outcome, but it must be kept in mind that some aspects of any area of law are probably not resolved by recourse to clever argumentation, nor by reliance on international material alone or dominantly. For instance, in areas of law that are drenched with domestic case law, texts, statutes and academic commentary, there may be less value in internationalisation on the humanistic front – the student can gain the critical thinking from the various perspectives offered by domestic legal sources. But in smaller countries, and in emerging

[40] Ibid, 849, but compare Jeremy Waldron, 'Dirty Little Secret' (1998) 98 *Columbia Law Review* 510, 527-28 (albeit arising in another context).

[41] Afshin A-Khavari, 'The Opportunities and Possibilities for Internationalising the Curriculum of Law Schools in Australia' (2006) 16 *Legal Education Review* 75, 81; Appelbaum, above n 10, 367.

[42] Gough, above n 32, 89.

[43] Knight and de Wit, above n 1; Bourn, above n 14, 563-64.

[44] A-Khavari, above n 41, 81-82.

areas of law where the domestic resources are less saturating, internationalisation proves especially useful.

D *Academic Benefits*

Finally there are academic benefits to internationalising law curriculum content.[45] These benefits arise if internationalisation helps one to see there is no single right way to solve a legal problem[46] or to see that legal systems are connected by history.[47] The resulting benefit is that legal research output will be less parochial[48] and accordingly more able to deal with the diversity and complexity that exists in law.[49] The hope is that internationalising curriculum course content will play its part in encouraging legal research to move beyond what the law *is*, to explore the more interesting and arguably more useful question of *why* the law is how it is.[50]

The only references to this sort of benefit by the academics have been discussed above: law reform and critical thinking. This benefit was not otherwise explicitly contemplated by academics or by students. This is understandable as the torts courses at UWA and Otago are undergraduate courses where the focus is not on legal research output. At other universities, it may be more appropriate to implement an internationalised curriculum in order to make academic output more robust and insightful.

E *Not Valuable Enough?*

Some claim that internationalising curriculum content is not valuable, or not valuable enough to be worth implementing. One objection to internationalisation is that teaching more international material takes away resources and time from teaching the domestic component of the course.[51] Other arguments against internationalisation have recently been identified as the impossibility of gaining any meaningful understanding of a foreign legal system in a short span of time; the likelihood of rendering a disservice to the study of comparative law by conducting oversimplified comparisons of legal systems; and the dispensability of studying international treaties due to the

45 See Bell, above n 14; Gough, above n 32, 89; Leask, above n 4, 102.

46 Bollag, above n 2; Walter A Stoffel, 'Legal Education in Switzerland: An Example of the Continental Style' (2001) 51 *Journal of Legal Education* 413, 413; John Horsley and Jill Jones, 'When Legal Worlds Collide' (Paper presented at Reflective Practice: The Key to Innovation in International Education Conference, Centre for Research in International Education, Auckland, New Zealand, 23-26 June 2005).

47 Jonathan Barrett, above n 12, 12.

48 Knight and de Wit, above n 1.

49 Blackett, above n 16, 72-73.

50 Jonathan Barrett, above n 12, 9.

51 Yves-Marie Morissette, 'McGill's Integrated Civil and Common Law Program' (2002) 52 *Journal of Legal Education* 12.

incorporation of international provisions into domestic law through enabling legislation.[52]

The main response to the first objection is to point out that internationalising curriculum content need not reduce the quality of domestic law teaching. It is inexpensive to implement, faculty resistance can be overcome and lecturers can easily be taught how to internationalise.[53] Indeed the next section of this article is one attempt to this end.

The second and third objections are not persuasive because they are not relevant. Internationalising is not primarily valuable for its ability to thoroughly teach a foreign legal system or to inspire students' interest in comparative law. Indeed, separate elective courses commonly exist with those ends in mind. Instead, internationalising curriculum content has a broad range of serious rationales as explained above.

The fourth objection incorrectly characterises common law legal systems' use of international treaties. In reality, courts regularly rely on even non-ratified treaties in a range of ways.[54] Additional to these cogent responses is the practical point that 'the controversy over internationalisation has abated', with many law schools internationalising.[55]

The trouble is that many other law schools have not made moves to internationalise. At Otago and UWA, for instance, the arguments about doing students a disservice were emphasised by the interviewed academics. Both stressed that time and knowledge constrained the ability to internationalise curriculum content, whatever its value. Time was pressed as it was, and pressures were exacerbated whenever legislative change led to an increasingly nuanced domestic legal system. Meanwhile, knowledge constraints posed a practical limit to the value of internationalisation. The teacher would require a lot of knowledge to even be aware of the different operation of similar law in different jurisdictions.

This results in a thorny situation for those considering changes to curriculum content. There are serious practical barriers to internationalisation in tort law. These same barriers would seem to arise in many areas of law: How is time presently allocated? Is there room to add material? Do the teachers know enough to add international material? Perhaps in extremely nuanced legal areas, with intricate statutory frameworks that make the area of the law unique, the difficulties to internationalisation are prohibitively high. In other areas, however, complaints about time and

52 Lo, above n 1, 5.
53 John Barrett, above n 2, 857.
54 See Brian Flanagan, 'Judicial Globalisation and Perceptions of Disagreement: Two Surveys' [2012] *New Zealand Law Review* 443; Alice Osman, *The Effects of Unincorporated International Instruments on Judicial Reasoning in New Zealand* (LLB(Hons) Dissertation, University of Otago, 2012).
55 Lo, above n 1, 6.

knowledge should not outweigh the benefits of internationalisation – economic, political, humanistic, and, to a lesser extent, academic.

Moreover, if internationalisation can be implemented relatively easily in many legal areas, this will further help answer the case that practical constraints bind too tightly. Accordingly an investigation into how to implement internationalisation follows in Part III. A structured approach to internationalising is offered. This should allow those designing curricula to judge for themselves to what extent, and in what form, internationalisation might feature in their own curricula.

III HOW TO INTERNATIONALISE

There are two steps to take in identifying the characteristics of an internationalised law curriculum. First, an institution must choose the broad approach it will adopt to achieve internationalisation. Secondly, an institution has several specific tools it may use to implement its chosen approach. The concepts and specific suggestions presented below can be applied to any legal course.

A *Select the Broad Approach*

There are two broad approaches an institution can choose.[56] The first is to simply quantitatively increase 'global exposure'.[57] The second is to push for a "paradigm shift to educate lawyers in the new world reality",[58] requiring 'a qualitative rather than a quantitative change in legal education'.[59] With the paradigm shift approach, the curriculum focuses on the legal problem and then provides a range of solutions to that problem drawn from a number of jurisdictions. This is done instead of providing students with a single – domestic – response to that problem.[60]

The choice in approach matters because it will affect outcomes for the internationalised curriculum. For example, the quantitative approach risks 'token'[61] or occasional inclusion of an international case, taught at the margins of the course. Such treatment suffices under this approach because the goal is merely more interactions with international material of any kind and in any way. This approach would also favour creating separate courses in which the international material is covered (in torts, courses such as 'international torts' or 'comparative torts') over integrating

[56] Lo, above n 1, 7-8 recently came to a consistent conclusion. Only two of the four approaches she outlines apply to curriculum content rather than the entire curriculum.
[57] Grossman, above n 2, 22.
[58] Ibid.
[59] Ibid, 22-23; Reisman, above n 17, 327.
[60] Blackett, above n 16, 69.
[61] ILSAC Report, above n 20, 6-7

international components into the compulsory domestic law course.[62]

The paradigm shift approach, on the other hand, sees a separate course as misguided.[63] First, to keep international tort material outside the compulsory domestic course is a mistake, given the wide array of reasons it is valuable for students to experience internationalisation. Secondly, it is harder for students to engage with internationalisation if they are not exposed to it early on.[64] Students may well perceive an elective international torts paper as a luxury, missing the point that international material has serious benefits beyond the immediate teaching context. Students should at least be given an introduction to this international material, in the standard course.[65]

Neither the UWA nor the Otago courses neatly fit a single approach. In fact, both interviewed academics indicated they had no particular internationalisation strategy. One described the present approach at their law school as 'holistic' while the other's was described as 'ad hoc' and based on 'impression'. These views may sound familiar to readers from other law schools.

If so, this article's call for careful consideration of the strategy to be employed is timely. There is plenty of material for thought about the internationalisation of other law courses. The quantitative approach, for instance, will be easier to implement in any law course: inject the course with international references. But the same fears that arise in the torts context are near the surface in other legal subject areas too. For instance, token inclusion of some international material is unlikely to reap the rewards that internationalisation can bring. At the same time, the creation of a separate, optional course dealing with the international perspective risks being a mistake in the context of any other law course. In fact, in those less 'fundamental' law papers than torts, the risk is even higher that relegation of internationalisation to an elective will mean students see internationalisation as a luxury. Course coordinators should therefore think carefully about the kind of internationalisation they implement; it may make all the difference.

B *Choose the Specific Tools*

Consciously selecting an approach, or a hybrid of approaches, has the advantage that the institution can then specifically make its courses more internationalised with the broad approach always in mind. Regarding the quantitative approach, the most frequently

[62] Robert C Clark, 'Bases and Prospects for Internationalization of Legal Education in the United States' (2000) 18 *Dickinson Journal of International Law* 429, 438.

[63] See Blackett, above n 16, 69; Sanderson, above n 35, 664; ILSAC Report, above n 20, 5.

[64] A-Khavari, above n 41, 89.

[65] Blackett, above n 16, 69-70.

cited specific way to internationalise is to increase the number of international cases used.[66] Using internationally authored textbooks is also suggested.[67]

The paradigm shift approach, however, would see these mere quantitative increases as insufficient to reap the benefits of internationalisation.[68] Instead, it stresses the importance of having a broad range of sources, and of explaining any jargon contained within the international materials.[69] It suggests giving the international material a substantial role in the course by at least discussing the differences, contradictions and similarities between international and domestic materials.[70]

Another specific tool with which to implement the paradigm shift approach is to ensure students gain international 'perspectives'.[71] Examples of these include in-depth study of the international origins of domestic law,[72] and examination of differing and similar international issues and practices.[73] At one of the universities studied, these international perspectives took the form of frequent questions asked of students in course documents. These questions included the applicability of foundational English decisions in the contemporary domestic context, the strengths and weaknesses of tort law at a systemic level, and possible alternatives to tort law.

These suggestions are helpful for the internationalisation of a large number of other law courses. The point about jargon is a good example. Legal terms can be unfamiliar to students at first. Each situation where this is so is an easy opportunity for internationalisation. Giving examples of how the equivalent concept or doctrine is used overseas illustrates its purpose domestically. For instance, the word 'torts' can be demystified in New Zealand or Australia by explaining to students that other legal systems are more explicit about the fact that this area of law relates to 'wrongs' or 'mishaps'.[74] The teaching of law is replete with these opportunities.

The use of international perspectives is another good candidate for transplantation into the internationalisation of other areas of

66 Martin J Haigh, 'Internationalisation of the Curriculum: Designing Inclusive Education for a Small World' (2002) 26 *Journal of Geography in Higher Education* 49, 59; Dunne, above n 13, 615; Edwards, above n 22, 188; Dorsen, above n 12, 336; Leask, above n 4.

67 Morissette, above n 51, 24-26.

68 Haigh, above n 66, 54; compare Elkin, above n 3, 321.

69 Jonathan Barrett, above n 12, 14-15.

70 Morissette, above n 51, 27.

71 Dunne, above n 13, 615; Sanderson, above n 35, 665, 668; Leask, above n 4, 108; Grossman, above n 2, 35; Edwards, above n 22, 188.

72 Edwards, above n 22, 189; Haigh, above n 66, 59. For a recent account of many excellent examples of this from ancient legal systems, see M Stuart Madden, 'Efficiency Themes in Tort Law from Antiquity' (2014) 34 *Adelaide Law Review* 231.

73 Leask, above n 4, 107-08.

74 Morissette, above n 51, 24-25.

law. Spending some time studying the (often international) history of a particular legal idea or doctrine is easily applicable beyond torts. So is questioning students about the strengths and weaknesses of a domestic legal solution to a problem, or asking them to devise alternatives to the status quo. Legal education is also replete with these opportunities.

Finally, reflecting on the structuring of the course is an opportunity for qualitative implementation of internationalisation. Layout has been identified as important: is international material integrated with the domestic material in a simple chronological order, does it come seriatim, or does it come separately after the domestic material?[75] Are the international materials described as additional, non-compulsory resources for keen students to peruse? Are international materials used only alongside domestic ones? The lesson is that every part of the course provides an opportunity for having students – and, before that, their teachers – think in a broader, purposive and global way.

It will be seen there are many parts to any legal subject that are amenable to internationalisation. It is important, however, for the specific changes to be guided by clear purpose. And it seems that fuller enjoyment of the benefits of internationalisation will be had if the paradigm shift approach is the goal. It avoids the risks of tokenism, and of undermining the central importance of internationalisation. Although this means the specific changes that are required are more far-reaching, the concrete examples provided in this section reveal that even the paradigm shift approach to internationalisation need not be a radical overhaul of all that has come before.

IV CONCLUSION

With only past and present as reference points, achieving change can be difficult. Change becomes most unlikely unless the 'creative imagination' [76] of those who can effect it is engaged. This article has tried to do so by re-examining the reasons why internationalisation of law curriculum content is valuable. And although attention was devoted to tort law in particular, the appraisal of internationalisation applies generally. Internationalisation makes economic sense, it sheds egalitarian light on right and wrong in the classroom as well as between legal systems, and it develops critical and incisive law students. The teaching of law in areas other than torts can reap similar rewards. The implementation of internationalisation should therefore proceed, and this article has suggested how: clarity of purpose is important, and specific reforms will follow. Armed with these new reference points, change will hopefully be forthcoming.

[75] Morissette, above n 51, 27.
[76] Haigh, above n 66, 53.